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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 23

Application Number: 09/900,808
Filing Date: July 06, 2001
Appellant(s): SHACKLEE, FRANKY LEE

Luke Pedersen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 3, 2003.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 24-37 and 43-48 are pending.

This appeal involves claims 24-26, 28-37 and 43-47.

Claims 27 and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 1-23 and 38-42 have been canceled.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 24-26, 28-37 and 43-47 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

A substantially correct copy of appealed claims appears on pages 2-5 of the Appendix to the appellant's brief. The minor errors are as follows: Claims 1-23, 27, 38-42 and 48 are not appealed claims.

(9) Prior Art of Record

5,438,935	SEITZ	8-1995
4,785,930	FISCHER et al.	11-1988
4,733,773	LABIANCA et al.	3-1988
4,660,733	SNYDER et al.	4-1987
3,599,826	ROCHER	8-1971
2,916,141	ARNOT	12-1959

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 24, 30-37, 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al. (Fischer).

Fischer discloses a container comprising a container comprising a storage vessel (tube 2a) with an interior compartment, and an access opening at one end; a removable end cap (hinged lid 6) releasably and mechanically coupled to the storage vessel and operable to close the access opening, a first flange (the outwardly curled end edge of tube 2 as best shown in Fig. 3 and 5) extending from an outer surface of the storage vessel, the first flange being sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap; a generally rectangular first stacking lug (collar 8 including a plate proximal and parallel to the access opening, a plate distal and parallel to the access opening and stacking surfaces 3 and 4) being disposed upon the outer surface and having a generally cylindrical, tubular interior diameter operable to receive the storage vessel therein; and wherein the first flange extends from the outer surface of the storage vessel at a location between the access opening and the stacking lug thereby forming a cylindrical neck between the access opening and the stacking lug.

The first flange extends from the outer surface of the storage vessel at a location between the access opening (the left side of the first flange defines the access opening as shown in Fig. 5 forming the plane of the access opening) and the stacking lug (collar 8), thereby forming a cylindrical neck (the radial outer surface of the first flange is generally cylindrical) between the access opening and the stacking lug.

The first flange is sized to cooperate with a second flange (that portion of lid 6 which is most closely adjacent to outwardly curled end edge of the storage vessel which is best shown in Fig. 5 as the U-shaped channel holding ring seal 25).

Claims 25, 26, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of Rocher.

Fischer discloses the invention except for the backing rings which contact the first and second flanges. Rocher teaches backing ring (19) which backs the first flange (12) on the storage vessel (11) and also the second flange (22) on the end cap (16). It would have been obvious to add the backing ring in order to make the sealed closure joint more secure to prevent inadvertent or unauthorized opening of the pressure vessel.

Claims 25 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of Seitz.

Fischer discloses the invention except for the backing ring which contacts the first flanges. Seitz teaches backing ring (14) which backs the first flange (18 and 16) on the storage vessel. Seitz also teaches a backing ring as parts (14 and 16) or 16 by itself which backs the first flange 18 on the storage vessel. It would have been obvious to add the backing ring in order to reinforce the sealed closure joint.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of LaBianca et al. (LaBianca).

Fischer discloses the invention except for the material of the stacking lug and storage vessel is not specified. LaBianca teaches stacking lug and pressure vessel materials made of high density polyethylene (see col. 10, lines 1-4). It would have been obvious to make the stacking lug and pressure vessel of Fischer from high density polyethylene in order to easily form the lug or storage vessel in a single forming operation.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of LaBianca and Snyder et al. ('733)(Snyder).

Fischer discloses the invention except for the material of the stacking lug is not specified. LaBianca teaches stacking lug materials made of high density polyethylene (see col. 10, lines 1-4). It would have been obvious to make the stacking lug of Fischer from high density polyethylene in order to easily form the lug or storage vessel in a single forming operation. Snyder teaches a support for a vessel made from rotationally molded cross-linked high density polyethylene. It would have been further obvious to make the stacking lug from rotationally molded cross-linked high density polyethylene in order to provide weatherability, impact resistance and stress cracking resistance.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer in view of Arnot.

Fischer discloses the invention except for the humidity indicator. Arnot teaches a humidity indicator. It would have been obvious to add a humidity indicator in order to ensure

that the interior chamber's humidity conditions are not changing so that the contents do not degrade due to high humidity.

(11) Response to Argument

102 Rejection

Appellant argues three parts of claim 24 and designates these arguments into parts A-C. Part A discusses the location of the first flange as being between the access opening and the stacking lug. In considering the access opening, it is noted that the access opening is an element which is not physical (since it can't be touched) and that the access opening or any opening is the absence of a closure. The first flange (the outwardly curled end edge of tube 2 as best shown in Fig. 3 and 5) is a physical (can be touched) element and the stacking lug [first stacking lug (collar 8, including a plate proximal and parallel to the access opening, a plate distal and parallel to the access opening and stacking surfaces 3 and 4)] is a physical (can be touched) element. Appellant believes that the first flange is not between the access opening and the stacking lug because the first flange defines the access opening. This argument doesn't seem to be well thought out because appellant mistakenly believes that if the first flange defines the access opening then the access opening must be one and the same as the first flange, i.e., they are the same element. The first flange and the access opening are extremely different elements, one element, the first flange, is physical and can be touched, the other element, the access opening, is not physical. The access opening is adjacent to the left side of the first flange as shown in Fig. 5 and 6 and the first flange is between the access opening and the stacking lug.

Part B discusses the first flange being sized to cooperate with a corresponding second flange. This limitation is an intended use limitation setting forth that the first flange must be functionally capable of cooperating with a hypothetical second flange extending from an exterior surface of the end cap. It is clear from Fig. 5 that the first flange (the outwardly curled end edge of tube 2) not only cooperates but mates or engages with at least the ring seal 25 and cooperates with a skirt or flange extending perpendicularly from the flat face of lid 6.

Part C discusses the generally cylindrical, tubular interior diameter of the stacking lug. The stacking lug includes two plate parallel to the access opening and two stacking surfaces 3 and 4 and is hollow as is best shown in Fig. 2 and 3. Appellant believes the interior diameter to be circular at best. The difference between a circle and a cylinder is that the circle is two-dimensional while a cylinder extends in a third dimension or is three-dimensional. The two plates which are parallel to the access opening of the stacking lug have cylindrical interior diameters since the plates have a thickness (see Fig. 5 and 6 for the thickness of the plates as the plates are cross hatched in section). The word "tubular" is broader than the word cylindrical since a cylinder is a tube with a circular cross section. The examiner concludes that the interior diameter of the stacking lug is generally cylindrical and tubular. Appellant may be suggesting that claim 24 encompasses a scope including a interior diameter of a cylindrical tube which extends from a first end face of the stacking lug to the opposite end face and that this tube has a length equal to the thickness as defined by the distance between the two end faces. Claim 24 has a scope which is broader than what appellant suggests.

103 Rejection of Fischer in view of Rocher

Appellant states that Rocher does not include an opening configured to receive the storage vessel therethrough (claim 25) or an opening configured to receive an end cap therethrough (claim 26). Figures 1-3 of Rocher clearly show that ring 19 receives both the storage vessel (11) and the end cap (16). Appellant's remarks regarding motivation have very little detail and suggest that the examiner failed to provide motivation. The motivation to combine Rocher as stated in the rejection is to prevent inadvertent or unauthorized opening of the pressure vessel by adding the backing ring (19) to secure the sealed joint.

103 Rejection of Fischer in view of Seitz

Appellant states that Seitz does not include an opening configured to receive the storage vessel therethrough (claim 25). Figures 2 of Seitz clearly shows that ring 14 receives the storage vessel (12). Appellant's remarks regarding motivation have very little detail and suggest that the examiner failed to provide motivation. The motivation to combine Seitz as stated in the rejection is to reinforce the sealed closure joint.

103 Rejections involving LaBianca, Snyder and Arnot

Appellant fails to provide a discussion other than what has been discussed with regards to claim 24 and appellant's groups claims 28, 29 and 45 to stand and fall within group 1 with claims 24, 28-37 and 43-47. Therefore, there are no further arguments to rebut.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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January 14, 2004

Conferees
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njn

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